

Charles L.A. Terreni
Chief Clerk/Administrator
Phone: (803) 896-5133
Fax: (803) 896-5246

The Public Service Commission

State of South Carolina

218884

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Dept: LA Legal Department
F. David Butler, Senior Counsel

Date: 9/2/09 Phone: (803) 896-5113
Fax: (803) 896-5231

Time: 1:10

September 2, 2009

Certified Mail -Return Receipt Requested

Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
P.O. Box 944
Columbia, SC 29202

C. Lessie Hammonds, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

Re: Application of iBasis Retail, Incorporated
Commission Docket No. 2009-201-C

RECEIVED

SEP 02 2009

PSC SC
DOCKETING DEPT.

Dear Bonnie and Lessie:

Enclosed please find a proposed order in the above-captioned docket, which is being delivered to you pursuant to the requirements of 26 S.C. Code Ann. Regs. 103-841(C). As parties of record in this iBasis case, you have ten (10) days from your receipt of this proposed order to file exceptions, present briefs, and/or file written requests for oral argument to the Commission, if you should desire to do so. If none of these are received by me within 10 days of your receipt of the proposed order, I will request that the Commission issue its order in this case based upon the record of the formal proceeding and the proposed order.

Thank you in advance for your consideration in this matter.

Sincerely,
David

F. David Butler
Hearing Examiner

FDB/dd
Enclosure
cc: Joseph Melchers, Chief Legal Advisor
Douglas Pratt, Advisory Staff

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-201-C - ORDER NO. [Order No.]
SEPTEMBER 2, 2009

IN RE: Application of iBasis Retail, Incorporated for	)	HEARING EXAMINER'S
a Certificate of Public Convenience and	)	PROPOSED ORDER
Necessity to Provide Long Distance	)	GRANTING
Telecommunications Services and for	)	CERTIFICATE AND
Alternative Regulation of Its Long Distance	)	APPROVING MODIFIED
Service Offerings	)	ALTERNATIVE
	)	REGULATION
)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of iBasis Retail, Incorporated (“iBasis” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2008) and the rules and regulations of the Commission. By its Application, iBasis also requests alternative regulation of its business interexchange services consistent with Commission Orders, and waiver of certain Commission regulations.

The Commission’s Docketing Department instructed iBasis to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of iBasis and of the manner and time in which to file the appropriate

pleadings for participation in the proceeding. iBasis complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

Subsequently, iBasis and ORS filed a Settlement Agreement attached hereto as Order Exhibit 1. A hearing was convened on August 31, 2009, at 11:30 a.m. in the offices of the Commission in Columbia, South Carolina, before David Butler, Hearing Examiner. iBasis was represented by Bonnie D. Shealy, Esquire. The Office of Regulatory Staff (“ORS”) was represented by C. Lessie Hammonds, Esquire.

Tony Bloom, Vice President, Retail Prepaid Services for iBasis, Inc, the parent company of iBasis Retail, Incorporated, testified in support of the Company’s Application. The record reveals that iBasis is a privately-held corporation organized under the laws of the State of Delaware, which is registered to transact business in South Carolina. According to Mr. Bloom, the Company seeks authority as a reseller of interexchange services. Mr. Bloom explained the Company’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures. The Company intends to market interexchange services through the sale of prepaid calling cards. Mr. Bloom noted that a \$5,000 bond had been posted. Mr. Bloom also discussed iBasis’s technical, financial, and managerial resources to provide the services for which it seeks authority.

With regard to technical, financial, and managerial capabilities, the Company’s Application and Mr. Bloom’s testimony both evidence that iBasis’s management has extensive experience in telecommunications, information technology, regulatory matters,

and accounting and finance. Mr. Bloom also testified that iBasis will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. Bloom offered that approval of iBasis's Application would serve the public interest.

Mr. Bloom, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in another state. The Company also requests a waiver of any Commission policy that would require it to maintain its books under the Uniform System of Accounts ("USOA") method. The Company uses Generally Accepted Accounting Principles ("GAAP") to maintain its books. Therefore, according to the Company, it would create a hardship to maintain a separate accounting system.

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. iBasis is organized under the laws of the State of Delaware as a privately-held corporation, and is authorized to do business in South Carolina by the Secretary of State.
2. iBasis desires to operate as a provider of resold interexchange services in South Carolina, by providing prepaid calling card services. The Company has filed a \$5,000 bond in this regard.

3. We find that iBasis possesses the managerial, technical, and financial experience and capability to operate as a provider, through resale, of interexchange services in South Carolina.

4. We find that the issuance of a Certificate of Public Convenience and Necessity to iBasis to operate as a reseller of interexchange services in South Carolina would be in the best interest of the citizens of South Carolina by providing more innovative services.

5. iBasis requests a waiver of 26 S.C. Code Ann. Regs. 103-610, and for waiver of any Commission policy that would require it to maintain its books under USOC. The Commission finds iBasis's requested waivers reasonable and understands the potential difficulty presented to iBasis should the waivers not be granted.

6. The Company has the managerial, technical, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. The Commission concludes that iBasis possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the issuance of the authority to provide intrastate interexchange telecommunications services as requested by iBasis and as set forth in its Application and Mr. Bloom's testimony is in the best interests of the citizens of the State of South Carolina.

3. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to iBasis to provide resold intrastate interexchange telecommunications services.

4. The Commission adopts a rate design for iBasis for its residential interexchange services, if any, which include maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation, etc.*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. iBasis shall not adjust its residential interexchange rates for end-users, if any, below the approved maximum level without notice to the Commission and to the public. iBasis shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications, etc.*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2006).

6. The Commission concludes that iBasis's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a

particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

7. We conclude that iBasis's request for waiver of 26 S.C. Code Ann. Regs. 103-610 and use of the USOC should be granted. The waivers are not contrary to the public interest.

8. The Settlement Agreement between the Company and ORS should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to iBasis to provide intrastate interexchange services through the resale of services authorized for resale by tariffs of carriers approved by the Commission within the State of South Carolina.

2. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. The Company shall file, if it has not already done so by the date of issuance of this Order, its revised local and long distance tariffs. The revised tariffs should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariffs should be made using the ETariff System. The revised tariffs shall be consistent with the findings of this Order and the

Settlement Agreement, and shall be consistent with the Commission's Rules and Regulations, and shall be filed as stated within 30 days of receipt of this Order.

4. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. iBasis shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If iBasis changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, iBasis shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, iBasis shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. In addition to the financial filings required supra, iBasis shall file annual financial information in the form of annual reports and gross receipts reports as required

by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, iBasis shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at www.regulatorystaff.sc.gov, and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund ("USF") Contribution Worksheet, which may be found on the ORS's website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The South Carolina Universal Service Fund Contribution Worksheet is due to be filed annually no later than **July 1st** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests,

and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. iBasis shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS website at www.regulatorystaff.sc.gov; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, iBasis requested a waiver of 26 S.C. Code Ann. Regs. 103-610 and use of the USOC. The Commission finds iBasis’s requested waivers reasonable and understands the potential difficulty presented to iBasis should the waivers not be granted. The Commission therefore grants the requested waivers. However, iBasis shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and iBasis shall promptly notify the Commission and ORS if the location of its books and records changes.

12. The Settlement Agreement between iBasis and ORS is hereby approved.

13. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Elizabeth B. Fleming, Chairman

ATTEST:

John E. Howard, Vice Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

DOCKET NO. 2009-201-C

IN THE MATTER OF:	)	CERTIFICATE OF SERVICE
Application of iBasis Retail, Incorporated for a	)	(BY CERTIFIED US MAIL)
Certificate of Public Convenience and Necessity	)	(Return Receipt Requested)
to Provide Long Distance Telecommunications)	
Services and for Alternative Regulation of Its)	
Long Distance Service Offerings within the)	
State of South Carolina)	

I, Dale E. Davis, do hereby certify that I have on the date indicated below served the following named individual(s) with one (1) copy of the pleading(s) listed below by causing said copies to be deposited with the United States Postal Service, by certified mail, return receipt requested, postage prepaid and addressed as follows:

PARTIE(S) SERVED:

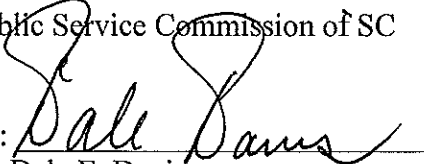
Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
P. O. Box 944
Columbia, SC 29202

C. Lessie Hammonds, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

PLEADING(S): ORDER GRANTING CERTIFICATE AND APPROVING
MODIFIED ALTERNATIVE REGULATION – PROPOSED ORDER OF THE
HEARING EXAMINER

Public Service Commission of SC

By:


Dale E. Davis

Columbia, South Carolina
September 2, 2009